

Catalonia in deadlock, and why that is a European problem

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José Luis Martí Di 2 Jan 2018

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The Catalan territorial conflict is stuck. That is not good news here. It does not mean that the conflict is being contained or the escalation stopped or anything like that. “Stuck” means that no clear solutions are on the table right now. That secessionists revalidated their parliamentary majority in the elections in Catalonia last week (despite the fact that they are also “stuck” in terms of popular support with 47% of the votes). That secessionist leaders persist, that they think they possess the democratic legitimacy required to advance in their way to independence. That Carles Puigdemont, the ousted regional President, is “stuck” in Brussels with three other former Ministers of his cabinet, insisting that they are in the exile, unable to come back to their country. That Prime Minister Mariano Rajoy, after pushing the “nuclear button” of Article 155, is not willing to negotiate or come to any plausible solution, other than letting judicial prosecutions go and blocking any possibility of a legal referendum. That the Spanish Socialist Party is also “stuck” in backing Mr. Rajoy’s immobility, and in insisting on a constitutional reform that has no clear horizon, and which is virtually impossible to materialize given *Partido Popular*’s lack of enthusiasm about it. And “stuck” means that no other European or international actor, with the exception of the Pope, has truly tried to help the main parties in the conflict to find ways of peaceful and democratic solution. Stuck, stuck, stuck. Everything is stuck in this conflict right now, and this is not good news. But who’s responsible for that?

Let me say it quite clearly: the Catalan conflict is our problem. Not the Catalan problem, not the Spanish problem, only. It is our common European problem. All European citizens, and particularly the European institutions, should be concerned about it, and should collaborate to find appropriate solutions. The fact that the conflict is “stuck” right now is bad news for everyone in the EU. And yes, finding a solution is the primary responsibility of Catalans and Spaniards. But all Spaniards are European citizens, we are all part of a common political project with the rest of European peoples, a project based on the fundamental values of human dignity, freedom, democracy, the rule of law, peace, and well-being, among others. And we all share the responsibility to promote such values across the Union, and all peoples have a clear duty of solidarity among themselves. Catalans and Spaniards are failing so far to find solutions to the problem. But it is our European common problem and our common responsibility to try to help them. More specifically, EU institutions should be doing much more of what they have done so far. I blame them for their passivity in the last couple of months.

The Facts

As I said in my [previous post](#), and *pace* T.S. Eliot, last October has been Catalonia’s cruelest month. In early September we initiated our descent into hell in seven steps. And all attempts to avoid the paramount irrationality of declaring an independence for which

Catalonia was not fully determined and not even ready to implement on practical grounds, failed one after another. Despite a last-minute mediation by the Basque *Lehendakari* (President) Iñigo Urkullu that – in October 26th – seemed to succeed in convincing Puigdemont to call for elections first, Puigdemont finally asked the Catalan Parliament to solemnly declare independence on the 27th. The Declaration was approved by secret ballot – an exceptional process in the Parliament – to shield secessionist MPs from legal liabilities; and it was passed as a “non-legal provision”, normally used for merely symbolic acts. It was passed with 70 votes in favor (out of 135), 10 negative ones, 2 abstentions, and the rest of MPs being absent of the chamber as a form of protest. Despite the intended solemnity of the event, there was no real parliamentary debate, the opposition leaders were not permitted to question the President or to discuss any aspect of the resolution, and a clear awareness of doing something illegal and shameful among the secessionist MPs was palpable. Much to secessionists’ own dismay, later on we heard secessionist leaders admitting that such declaration was only symbolic, that it lacked any legal validity and effects, and that they were fully aware that it was going to have no political significance either. It is difficult not to get upset by such a confession, whether you are secessionist or not. Civil order and democracy in Catalonia was being jeopardized just for an aesthetic move.

In any case, secessionists, within the Parliament and outside, celebrated the declaration with joy and ecstasy. The Parliament opened doors to hundreds of Catalan secessionist Mayors (there are 947 municipalities in Catalonia, most of them tiny and rural, where independentism gets much of its force), and they took pictures of themselves to remember that historical day. The Catalan media reported that the Catalan Republic had been declared. But the joy was extenuated by the awareness that nobody really thought that Catalonia was going to be actually independent. And, I must say, I’ve heard more petards and fireworks and seen more people jumping and dancing in the streets when Barça wins the Spanish football League – let alone the European Champions League –, than in October 27th. In fact, the Spanish Senate authorized that same day the activation of Article 155 of the Spanish constitution, which allows the central government to intervene in the government of an Autonomous Community when it violates severely its constitutional duties or seriously harms the general interest of Spain. And everyone informed knew very well that the declaration was not going to be effective at all.

What happened next is well known: No government, no important organization, no central actor on earth recognized the new Catalan state. Many of them, indeed, rushed to issue an official statement making it very clear that they considered the declaration contrary to Spanish law and giving firm support to the government of Mr. Rajoy. It is impossible to know with certainty what kind of phone calls and secret communications were made that day among intelligence agencies and powerful organizations of all sorts. What is obvious, until the opposite is proved, is that Catalan independentists had no international ally whatsoever on their side, neither governmental nor private.

Immediately afterwards, on Sunday 29th Puigdemont flew with five of his ministers to “exile” in Brussels – although one of them came back home afterwards. By doing so they avoided the order to appear before the judge who is investigating their case (in Spain it is the pre-trial judge the one who investigates, not the public attorney). They avoided also a

very likely pre-trial detention, even if some of the ministers who stayed here, despite being immediately detained, were finally released when their judicial process was backlogged in the Supreme Court. Many secessionists were expecting some acts of passive resistance to “defend the Catalan autonomous institutions”, as they said. But instead of organizing that, the government disbanded and partly fled to Brussels in a clear attempt to internationalize the conflict.

A few days after the declaration, Article 155 was officially enforced. It is important to clarify that this Article does not imply the suspension of the Autonomy in Catalonia. But it allows the central government to make the necessary interventions to redress a situation of unconstitutionality. The limits of that permission are controversial in Spanish Constitutional law. The Article, an import from German Constitutional Law, has never been activated, neither in Spain nor in Germany. Many have argued that Article 155 cannot be used to suspend a regional parliament. Some think that it cannot cover the suspension of the regional president either, or a call for elections, which is a presidential prerogative. Interventions from the central government must be limited just to redress the decisions or initiatives that had violated the constitutional legality. That remains, as I said, unclear. If it is true, then Mr. Rajoy’s actual use of Article 155 might have been unconstitutional. We will see, eventually, whether the Constitutional Court is of the same opinion.

The interventions made by the central government, however, have been much less aggressive than what many people expected. Even if the President and his ministers have been removed from their offices, the ministries have not been fully brought under control, the Catalan public broadcasting has not been neutralized or tampered with, the education system is unchanged, and the administration of Catalonia is basically going on as before. What is more, calling for elections in December 21st with the aim of letting the new Parliament elect a new government in January and let such new government rule autonomously again as soon as possible, was an unexpected move that shortened the period of application of Article 155 to its minimum. That does not mean neither that activating Article 155 was necessarily the best idea to deal with the terrible political situation, nor that its implementation is fully constitutional. But, frankly, things could have gone much worse.

It is important to say that in the days before the declaration of independence many were expecting the conflict to spiral out of control, with violence on the street and maybe even casualties. That this did not happen is a reason for gratitude and a token of responsibility on both sides – the comparatively mild response from Rajoy and the decision of Puigdemont and his cabinet to avoid an open confrontation, dissolve the crowds in the streets, and fly away. You can imagine how this deeply disappointed some secessionist citizens and organizations. It was a tough decision to be made.

After the activation of Article 155, all secessionist parties publicly “accepted” the elections and announced very early in November that they were going to run. They rejected the intervention and declared to be determined to defend the autonomy of Catalonia. But they did nothing to prevent or obstruct its enforcement. They basically cooperated with the central government’s decisions, with the judicial orders being issued, and with police. The left-wing independist party ERC immediately acknowledged that they had committed several mistakes, like having followed a “unilateral strategy” that implied breaking the law

and social peace in Catalonia, and proceeding to a declaration of independence while lacking sufficient popular support.

We had a quiet November, and a very quiet, even boring, electoral campaign in December. All debates were insubstantial, with all political parties blaming each other for the conflict. The citizenry, after such a Red October, was mostly caught in a sort of post-traumatic stress disorder. Secessionists were mostly depressed after realizing that independence was still a phantom, that the Catalan government was unprepared and had admittedly lied about the prospects of becoming a real Republic, and that their cause had virtually no international ally, and thus no chance to succeed in the short-run. Non-secessionists were still in shock about the events of the previous weeks. Spanish nationalists in Catalonia and the rest of Spain started demonstrating and hanging Spanish flags from the balconies, but other than that they kept relatively quiet.

And then came the election, the most important in the history of Catalonia with an unprecedented voter turnout of 82%. *Ciutadans*, the new unionist right-wing party, came in first with 25% of votes; *Junts per Catalunya*, the list of Puigdemont, second with 22%; and his former coalition partner ERC third with 21%. The three secessionist parties combined had lost two seats but kept the majority. However, with only 47% of the votes and a slight decline compared to the last election in 2015, they once again failed to get a popular majority for their secessionist aims. Moreover, many people had the impression that secessionist citizens cast their votes not out of enthusiasm and hope, but rather resigned and hopeless, but fearful of the alternative. Thus, despite the reiteration of results, something has changed in Catalonia. A majority of Catalans, for the third consecutive election, voted for non-independentist parties, that is, they voted against the independence of Catalonia. At the same time, *Partido Popular*, Mr. Rajoy's party, plummeted down to the 7th position with only 4% of the votes. And this is how we got stuck in the current situation, with no clear prospect in one way or another.

In the next few weeks the Parliament will have to choose the next President of the Catalan government. Secessionists are deeply divided about this. Some argue that Puigdemont should be restored in office to reverse the effects of Article 155 – that was the message they emphasized during the campaign, and Puigdemont had promised to return to Catalonia if that happened. Others point out that he cannot be elected president in absentia, while he stays exiled in Brussels, and that if he tries to meet his promise and come back he will be immediately detained. Another candidate would be ERC leader Oriol Junqueras, who lost to Puigdemont and is still in jail, in pre-trial detention. The non-secessionists, on the other hand, seem unable to rally behind a common candidate. This moment of uncertainty would be ideal for Mr. Rajoy to offer an alternative and attractive deal that might persuade some moderate secessionists and build a multilateral wide consensus in Catalonia. But there is no sign that he will be interested in anything else than reiterating his support to judicial prosecutorial decisions. Thus, everything indicates that the deadlock, caused by the political short-sightedness of our mediocre political elites, will continue for an undetermined length of time.

An EU's common problem

The non-Spanish reader might be feeling some compassion or concern about the political situation in Catalonia. But as I said above, this is not only a Catalan or a Spanish problem. Catalonia is a part of Europe. And the European Union is much more than a club or an international organization. It is a polity, with several political institutions, including a representative Parliament. The Catalan political situation is our common European problem. And I will end this post by offering two arguments – one legal, the other political, and I will leave aside the moral one – to call for an intervention of the EU institutions in the conflict.

First of all, I hold a European passport. I firmly believe in the European project of “creating an ever closer union of the peoples of Europe” (art. 1 TEU). I believe in a European Union that is genuinely “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights”, among others (art. 2 TUE). A Union whose main aim is “to promote peace, its values and the well-being of its peoples” (art. 3.1 TUE); which should “offer its citizens and area of freedom, security and justice” (art. 3.2 TUE), and “promote economic, social and territorial cohesion” (art. 3.3 TUE). A Union, finally, that pursues “the principle of sincere cooperation” should engage with Member States in “mutual respect, assist[ing] each other in carrying out tasks which flow from the Treaties” (art. 4 TUE).

I, the Union citizen José Luis Martí, have a right to be protected by European institutions. Such “institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society” (art. 11.2 TUE). I would expect the European Council to care about internal substantial conflicts which are threatening the values of the Union. The Council has the Treaty-based duty to “provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof” (art. 15.1 TUE). And I would expect, above all, an active intervention from the European Commission given that it is presumed to have the responsibility to “promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them” (art. 17.1 TUE). And, of course, I expect the European Parliament, the body that is meant to directly represent me and my fellow citizens in Catalonia and Spain (art. 10.2 TUE), to get actively involved to assist the parties of the conflict to find adequate solutions.

I have a legal right to be assisted by my European institutions, the Council, the Commission and the Parliament. And nothing prevents them from doing it. They could intervene in many different ways and in different degrees of intensity. They could hold a hearing, they could intermediate as an impartial arbitrator, they could explore and suggest solutions. And if everything else fails, they could activate Article 7 of the Treaty. Article 7, which might be triggered by the Commission, the Parliament, or a number of Member States, establishes that the Council “may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2” and it gives the Council prerogatives to “invite” the affected state to follow its recommendations, and even penalizing it with the suspension of certain rights if the conduct is not redressed.

Some may think that Article 7, often misnamed the „nuclear option“, would constitute a huge overreaction. But this is precisely the procedure that the European Commission just triggered on December 20th regarding the judicial reform in Poland right now. I don't

underestimate the severeness of that case, and the activation of Article 7 may well be justified. But the harm for democracy, equality, and the rule of law that we are witnessing in Spain in these months are by no means incomparable. Don't get me wrong, I'm not suggesting that the Catalan conflict is the Spanish central government's fault, and that the European institutions should intervene to reprimand and even penalize Madrid. All what I am arguing is that the role of European institutions, my institutions, should not be of total passivity in a major conflict like this, especially when the parties involved have proven to be unable to find adequate solutions.

But let me go beyond this legal argument. Political philosophers have struggled for decades to provide a good answer to the so-called demos problem. The traditional response was that all those legally subject to a political decision should have the chance to participate, directly or indirectly, in making it. But, of course, such a criterion is arbitrary and circular. It is arbitrary because it depends on what the law actually establishes. What is more, it might precisely be what is at stake, as it happens in the current political conflict in Catalonia, when secessionists challenge the idea that the only legitimate demos in Spain is the whole Spanish one. It is circular because the question is who should be able to participate in making the law, so we cannot presuppose that the law has already been made to establish the criterion of subjectedness.

The main alternative, the one that is more popular among theorists nowadays, is the all-affected principle. All those who are affected by a decision in a meaningful way should be able to participate in the decision, although this is compatible with having different people with different forms and degrees of involvement. Now, it is obvious that the major political conflict that we face in Catalonia clearly affects not only Catalans and Spaniards, but also the rest of Europeans. And for that reason I think all Europeans should feel concerned about what is happening now here. I do not suggest that they should all share the same degree of responsibility or equal vote in finding a stable decision. But they should all have a say and they should also feel some responsibility in the conflict. I am not talking about having an option or a privilege. I talk about having a duty.

The European Union is surrounded by many terrible political conflicts, some of them occurring in as close as the other side of the Mediterranean Sea. In a globalized world as the one in which we live in, I think the European Union should have a much more active role in helping other international actors to solve their major problems, either because that is what Articles 2, 3.1 and 8 TUE establish or because it is in our own self-interest to pacify neighbor regions or to avoid international conflicts. We may have a legal and moral duty to do so, but I also think it is largely optional. And, more specifically, I do not think the EU has a political duty to intervene in international conflicts. But this is where the Catalan case is different. We are not talking about an international crisis. It is a major conflict that has exploded within our borders, and which involves our fellow citizens. That is why I demand from the European Institutions, my institutions, to get involved and assist the parties to preserve the values we share and on which our common Union is grounded. How else can we really say that we are creating the "firm bases for the construction of the future Europe"?

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